UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FastBridge Learning, LLC and Theodore J. Christ and Colleagues LLC,	)	Civil No. ____________________
Plaintiffs,	)	**COMPLAINT AND DEMAND FOR JURY TRIAL**
v.	)	
ServeMinnesota and Reading & Math, Inc.,	)	
Defendants.	)	

Plaintiffs FastBridge Learning, LLC ("FastBridge") and Theodore J. Christ and Colleagues LLC ("TJCC") (collectively "Plaintiffs"), for their Complaint against Defendants ServeMinnesota and Reading & Math, Inc. (collectively "ServeMN"), state and allege as follows:

NATURE OF THE CASE

1. This is an action for copyright infringement brought under the Copyright Laws of the United States, 17 U.S.C. §§ 101 *et seq*.

2. Plaintiffs bring this action because defendants willfully infringed TJCC's copyrights in at least two of its student assessment programs.

PARTIES

3. Plaintiff FastBridge Learning, LLC is a limited liability company organized and existing under the laws of the state of Minnesota, with its principal place of business at

520 Nicollet Mall, Suite 910, Minneapolis, Minnesota 55402. FastBridge is an educational assessment company dedicated to helping teachers foster greater learning outcomes by providing seamless and fully integrated solutions for PreK-12 teaching, learning and assessment.

4. FastBridge is the exclusive licensee of TJCC's FAST™ assessments, and the assignee of TJCC's trademarks and domain names.

5. Plaintiff Theodore J. Christ and Colleagues LLC is a limited liability company organized and existing under the laws of the state of Minnesota, with a place of business at 520 Nicollet Mall, Suite 910, Minneapolis, Minnesota 55402.

6. Defendant ServeMinnesota is a non-profit corporation organized and existing under the laws of the state of Minnesota, with its principal place of business at 120 South 6th St., #2260, Minneapolis, Minnesota 55402.

7. Defendant Reading & Math, Inc. is a non-profit corporation organized and existing under the laws of the state of Minnesota, with its principal place of business at 2400 Park Avenue, Minneapolis, Minnesota 55404.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as the claims alleged herein arise under the Copyright Laws of the United States, 17 U.S.C. §§ 101, *et seq*.

9. This Court has personal jurisdiction over ServeMN because defendants reside and transact business in the state of Minnesota. On information and belief, ServeMN has entered into agreements with Minnesota school districts and others, including entities

outside Minnesota, to use, without permission, the FAST™ assessment materials.

10. On information and belief, ServeMN has licensed the FAST™ assessment materials to Minnesota school districts and other entities for significant remuneration.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(a), and because a substantial part of the events alleged herein occurred in Minnesota.

BACKGROUND

12. In or about 1999, Theodore J. Christ, Ph.D. (“Dr. Christ”), a faculty member at the University of Minnesota (the “University”), developed a first set of educational testing tools and materials to assess the reading and math abilities of students in primary and secondary schools.

13. Dr. Christ adopted FAST™ as a commercial mark to identify the source of his educational testing tools and materials.

14. Dr. Christ performed this work, and continues to do so, as part of his educational research responsibilities at the University and first created assessment tools in paper form (non-digital), which later evolved into a series of computer-based assessment tools (digital).

15. Pursuant to University policies, the University and Dr. Christ agreed to commercialize those tools and entered into various understandings and agreements to advance that goal.

16. On or about December 4, 2014, the Office of the Dean of the University’s College of Education and Human Development (“CEHD”) deemed Dr. Christ’s non-digital

educational testing tools and materials, also called Original Assessments, to be Academic Works subject to the University Board of Regent's copyright policy. That policy vests copyright ownership in University faculty.

17. Dr. Christ is a tenured Professor in the CEHD and was an author of the aforementioned Original Assessments, including the earlyReading English v1.1 and CBMreading English v3.0 assessments that are the subject of this action.

18. All of the rights in the earlyReading English v1.1 and CBMreading English v3.0 assessments were assigned to TJCC.

19. In February 14, 2015, FastBridge was established to commercialize the FAST™ materials and platform.

20. On March 19, 2015, the University, Dr. Christ, and TJCC, executed an Intellectual Property License Agreement ("IPLA"). The IPLA defined an "Assessment Module" as "a computer adaptive and enabled, derivative version of an Original Assessment" and a "Platform" as "software that functions to permit students, teachers and others on-line access to one or more of the Assessment Modules."

21. Using those definitions, the IPLA granted the University certain rights in the Assessment Modules and the Platform. In sum, the University can use the Platform without further permission from Christ and TJCC, but TJCC must grant permission if the University wants to execute any of its IP rights in an Assessment Module that is based on an Original Assessment. The IPLA also granted the University with all domestic and foreign copyrights in each Assessment Module and in the Platform.

22. Concurrent with clarifying the ownership of the intellectual property between Dr.

Christ and the University in the IPLA, the University and FastBridge entered into an exclusive license of the University's copyrights in the Assessment Modules and Platform to advance their commercialization. Consequently, on March 20, 2015, the University executed an Exclusive License Agreement ("ELA") granting FastBridge certain rights in FAST™, including the University's copyrights in each of the Assessment Modules and the exclusive right to sublicense.

23. Also on March 20, 2015, TJCC and FastBridge executed an Exclusive Copyright License Agreement for certain Original Assessments, including the earlyReading English v1.1 and CBMreading English v3.0 assessments that are the subject of this action.

24. TJCC applied for and obtained federal copyright registrations in the earlyReading English v1.1 and CBMreading English v3.0 assessments.

THE COPYRIGHTED WORKS

Title of Work	**Copyright Registration No.**	**Registration Date**
TX 8-296-270	earlyReading English v1.1	January 23, 2017
TX 8-307-152	CBMreading English v3.0	March 11, 2017

25. TJCC complied with all statutory requirements in securing federal copyright registrations for the copyrights in the earlyReading English v1.1 and CBMreading English v3.0 assessments. The Copyrighted Works are original works of authorship and constitute copyrightable subject matter under the copyright laws of the United States.

SERVE MINNESOTA'S INFRINGING ACTIVITY

26. As stated on ServeMN's website, its largest strategic initiative is Minnesota

Reading Corps, which is a program that helps students become successful readers.

27. On information and belief, defendant Reading & Math, Inc. operates the Minnesota Reading Corps program.

28. On or about May 8, 2011, Minnesota Reading Corps invited Dr. Christ to present and explain his assessment tools, including the development of the CBM reading assessment tool.

29. In or around the fall of 2012, Dr. Christ and Minnesota Reading Corps discussed a possible business relationship.

30. Minnesota Reading Corps published a RFP and sent it to Dr. Christ in January 2013. The purpose of the RFP was to adopt a new set of learning assessments for the 2013-14 academic year.

31. In February 2013, Dr. Christ responded to Minnesota Reading Corps' RFP, which included at least three cost proposals.

32. In March 2013, the University of Minnesota established the FAST Incubation Unit ("FIU") to promote the commercialization of the FAST™ materials by employing a professional staff. To that end, the FIU hired Quinn Montgomery ("Mr. Montgomery") as its General Manager.

33. Shortly after becoming FIU's General Manager in 2013, Mr. Montgomery began negotiating a license agreement with ServeMN for its use of the FAST™ materials. Those negotiations with Mr. Montgomery continued until or around January 2015.

34. In February 14, 2015, FastBridge was established to commercialize the FAST™ materials and platform.

35. On April 17, 2015, Dr. David Parker ("Dr. Parker"), a Research Director at ServeMN, sent an email to Dr. Christ requesting that the parties make the licensing agreement for the FAST™ system a priority.

36. In December 2015, ServeMN approached Dr. Christ with a request for edits to the copyrighted assessment materials. Dr. Christ communicated with ServeMN that correspondence regarding the FAST™ assessment materials was to be directed to FastBridge henceforth.

37. Both before and after FastBridge was formed, ServeMN indicated it would negotiate a license to use the FAST™ system.

38. On January 20, 2016, Terri Soutor ("Ms. Soutor"), FastBridge's CEO, hosted a conference call with Dr. Parker and Dr. Erin Haley Strub ("Dr. Strub") of ServeMN to discuss the Minnesota Reading Corps program and further negotiate the terms of a license agreement between FastBridge and ServeMN.

39. On March 1, 2016, Dr. Strub contacted FastBridge to request that FastBridge review and approve the assessment forms that would be made available to Reading Corps tutors for the 2016-17 academic year. ServeMN was directed to and agreed to place the FastBridge logo and copyright statement to each of the assessment forms that ServeMN intended to use during the 2016-17 academic year.

40. On April 4, 2016, FastBridge hosted a call with ServeMN and presented terms for a 2016-17 license agreement. FastBridge communicated that a license agreement must be in place by July 31, 2016 for ServeMN's use of the FAST™ assessments for the 2016-17 academic year.

41. On July 28, 2016, Dr. Parker communicated to FastBridge that ServeMN was considering the terms of the license agreement.

42. On August 2, 2016, FastBridge hosted a conference call with Dr. Strub to discuss the terms of the license agreement.

43. On August 11, 2016, FastBridge presented a license agreement to ServeMN based on license terms negotiated between April 4, 2016 and August 2, 2016.

44. On August 25, 2016, Dr. Strub communicated in writing to FastBridge that it had reviewed the terms of the license agreement and was "comfortable signing a 3 year contract," and directed FastBridge to send the license agreement for review by its counsel and signature by its CEO, Ms. Audrey Suker ("Ms. Suker").

45. On September 9, 2016, FastBridge sent the final license agreement to Drs. Parker and Strub.

46. In recognition of ServeMN's stated intent to copy and distribute the Copyrighted Works to a vast number of students in and outside the state of Minnesota, the aforementioned final license agreement included a graduated annual license fee based on the number of students supported in each academic year.

47. On September 26, 2016, and again on October 27, 2016, FastBridge inquired about the status of the license agreement.

48. On November 3, 2016, Ms. Soutor was contacted by telephone and email by Ms. Ruth L. Okediji ("Ms. Okediji"), ServeMN's designated counsel, requesting a discussion about the license terms.

49. On November 8, 2016, Ms. Soutor spoke via telephone with Ms. Okediji, and it

became clear that ServeMN had not negotiated the terms of the license agreement with FastBridge in good faith or with the intent to execute the agreement.

50. Apparently, ServeMN, on the advice of Ms. Okediji, took the position that it could freely use the Copyrighted Works because some of the funding to create the Copyrighted Works came from grants to the University from the U.S. Department of Education with Dr. Christ named as the Principal Investigator.

51. Instead of further negotiating with Plaintiffs, in December 2016, ServeMN, through its CEO Ms. Suker, requested a "royalty-free license" from the University for ServeMN to continue to use the Copyrighted Works despite the exclusive rights granted to FastBridge under the ELA.

52. Despite the aforementioned request for a royalty-free license, on April 5th and 24th, 2017, Dr. Strub wrote FastBridge requesting updates to the Copyrighted Works for the 2017-18 academic year.

53. As of July 31, 2016, in the absence of a signed license agreement with FastBridge, ServeMN was not authorized or licensed to reproduce, distribute, or display any of the Copyrighted Works for the 2016-17 academic year.

54. ServeMN has had actual knowledge of the copyrighted materials since at least May 2011.

55. On information and belief, ServeMN has reproduced and distributed copies of the Copyrighted Works for the purposes of commercial advantage and/or private financial gain.

CLAIM I
COPYRIGHT INFRINGEMENT- 17 U.S.C. §§ 101 ET SEQ.

56. Plaintiffs repeat the allegations above as if fully set forth herein.

57. The Copyrighted Works consist of original works of authorship and constitute copyrightable subject matter under the copyright laws of the United States. TJCC owns the copyrights in the Copyrighted Works and FastBridge is the exclusive licensee of the Copyrighted Works with a right to sublicense. A copy of the certificate of registration for the earlyReading English v1.1 Copyrighted Work is attached as Exhibit A. A copy of the certificate of registration for the CBMreading English v3.0 Copyrighted Work is attached as Exhibit B.

58. ServeMN has copied, distributed, and/or displayed the Copyrighted Works in whole or in substantial part without authorization from Plaintiffs. Such actions by ServeMN infringe Plaintiffs' exclusive rights in the copyrights for the Copyrighted Works in violation of 17 U.S.C. § 501.

59. For example, on information and belief, ServeMN distributed copies of the Copyrighted Works throughout the state of Minnesota and sold or licensed the Copyrighted Works to Michigan Reading Corp in the state of Michigan.

60. ServeMN's infringing activities have been willful.

61. ServeMN has derived revenue and has caused FastBridge monetary damages as a result of its infringing conduct.

62. Plaintiffs have suffered irreparable harm as a result of ServeMN's infringing activities and will continue to suffer irreparable harm in the future unless ServeMN is

enjoined from its infringing conduct.

CLAIM II
FEDERAL UNFAIR COMPETITION

63. Plaintiffs repeat the allegations above as if fully set forth herein.

64. ServeMN intentionally and willfully caused the FAST™ products, including the Copyrighted Works, to be distributed and used in interstate commerce by it and others.

65. By its actions, ServeMN is causing confusion in the minds of consumers as to the affiliation, connection, association or source of the FAST™ materials in violation of 15 U.S.C. §1125 (a).

CLAIM III
DECEPTIVE TRADE PRACTICES UNDER
THE MINNESOTA DECEPTIVE TRADE PRACTICES ACT

66. Plaintiffs repeat the allegations above as if fully set forth herein.

67. The acts of ServeMN in Minnesota constitute willful and knowing deceptive trade practices, in violation of the Minnesota Deceptive Trade Practices Act, Minn. Stat. § 325D.44.

68. Unless restrained, the foregoing wrongful acts of ServeMN will continue to cause irreparable injury to Plaintiffs, both during the pendency of this action and thereafter.

69. Therefore, this Court should enter orders, preliminarily and permanently enjoining ServeMN and its agents, employees and others acting in concert with it, from directly or indirectly causing likelihood of confusion or misunderstanding by another as to the source, sponsorship, approval, affiliation, connection, association, or certification of Plaintiffs' goods or services.

70. As a direct result of ServeMN's wrongful and willful conduct, Plaintiffs are entitled to damages, as well as recovery of all reasonable attorneys' fees and costs incurred in connection with this action.

CLAIM IV
UNJUST ENRICHMENT

71. Plaintiffs repeat the allegations above as if fully set forth herein.

72. ServeMN had knowledge of and access to Plaintiffs' valuable intellectual property.

73. In reliance on ServeMN's representations to license the Copyrighted Works, Plaintiffs allowed ServeMN to use the Copyrighted Works for ServeMN's business purposes.

74. Because of ServeMN's use of the Copyrighted Works for business purposes and subsequent refusal to license the Copyrighted Works as promised, ServeMN knowingly received something of value to which it was not entitled.

75. In view of ServeMN's unconscionable failure to license the Copyrighted Works before using them, it would be unjust for ServeMN to retain the benefits of the use of the Copyrighted Works.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court to:

A. Enter judgment that Defendants have willfully infringed the Copyrighted Works;

B. Enter orders preliminarily and permanently enjoining Defendants and their respective offices, directors, agents, servants, employees and other representatives, as well as those in active concert with them, from infringing any of Plaintiffs' exclusive rights in the Copyrighted Works;

C. Order the impounding for destruction of all unauthorized copies or reproductions of any products containing unauthorized reproductions of the Copyrighted Works;

D. Order an accounting of Defendants' revenue attributable to their infringement of the Copyrighted Works;

E. Award Plaintiffs monetary relief, at the election of Plaintiffs (as authorized by 17 U.S.C. § 504), in an amount to be fixed by the Court in its discretion as just, of either: (1) Actual damages sustained by Plaintiffs as a result of Defendants' infringement of the Copyrighted Works, together with Defendants' revenue attributable to the infringement, but not taken into account in computing actual damages, pursuant to 17 U.S.C. § 504(b); or

F. statutory damages for each of the Copyrighted Works, as authorized by 17 U.S.C. § 504(c)(2);

G. Award Plaintiffs' full costs and attorneys' fees, as authorized by 17 U.S.C. § 505;

H. Declare this case exceptional and subject to the remedies authorized by 15 U.S.C. § 1117;

I. Award Plaintiffs' prejudgment and post-judgment interest, as allowed by law; and

J. Award Plaintiffs such other relief as this Court deems just and appropriate.

REQUEST FOR A JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs respectfully request a trial by jury of any and all issues on which trial by jury is available under applicable law.

Dated: May 2, 2017

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